

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION AT LONDON**

**NEW LONDON TOBACCO MARKET,
INC. and FIVEMILE ENERGY, LLC**

Plaintiffs,

V.

**KENTUCKY FUEL CORPORATION and
JAMES C. JUSTICE COMPANIES, INC.,**

Defendants.

Civil Action No. 6:12-cv-91-GFVT-HAI

Judge Gregory F. Van Tatenhove

**MOTION OF DEFENDANTS FOR
ORAL ARGUMENT ON THEIR
MOTION TO ALTER OR AMEND**

Defendants, Kentucky Fuel Corporation (“Kentucky Fuel”) and James C. Justice Companies, Inc. (collectively, “Kentucky Fuel” or “Defendants”) move that the Court conduct an oral argument on their motion to alter or amend or to reconsider the Court’s September 23, 2019 Memorandum Opinion and Order (“the Opinion”). The Motion to Alter or Amend raises a significant Constitutional issue – whether Defendants were denied Due Process. Defendants therefore submit that oral argument is warranted. As further support for granting the motion, Defendants state as follows:

1. The Opinion in this long-running case imposed extraordinary damages on Defendants, in an amount exceeding \$35 million. Plaintiffs now seek to add over \$1 million in attorneys’ fees to the Court’s Judgment.

2. The process by which the Court came to the damages figure is equally extraordinary. The Court imposed a default judgement upon Defendants on liability, then rejected the Magistrate Judge’s calculation of damages because he did not conduct an evidentiary hearing. At the hearing, however, the Magistrate Judge relied on the same expert report as in his

initial ruling, without Defendants having an opportunity to cross-examine the author of the report.

3. The Court also took the highly unusual step of imposing over \$17 million in punitive damages, in addition to the punitive measure it imposed by its default judgment on liability.

4. Defendants have now challenged the Opinion, explaining in their motion that the Court's opinion and the process by which it was reached violate their rights under the Due Process Clause, as well as that they are unsupported by the evidence.

5. All of these issues are complicated and highly important to all parties. The Court should ensure that the parties are permitted to be fully heard by the Court.

WHEREFORE, the Court should set this matter for an oral argument at the Court's next convenience.

Respectfully submitted,

/s/ Richard A. Getty

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CERTIFICATE OF SERVICE

A copy of the foregoing Motion for Oral Argument was served on the 30th day of October 2019, electronically in accordance with the method established under this Court's CM/ECF Administrative Procedures and Standing Order upon all parties in the electronic filing system in this case.

/s/ Richard A. Getty
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